

Discussion Box 2.2

The separation of powers, the Lord Chancellor and the Supreme Court

The separation of powers was a political model advanced by Baron de Montesquieu in his 1748 text *The Spirit of Laws*. He contended that the state was divided into three branches (i) the executive (the government); (ii) the legislature (Parliament), and; (iii) the judiciary (the judges), each one having separate powers and responsibilities. By keeping these three branches and their functions separate, the potential for abuses of power would be diminished and liberty and democracy would be preserved.

The problem is that the Appellate Committee of the House of Lords breaches the doctrine in a number of ways:

- The Lords of Appeal in Ordinary are obviously part of the judiciary.
- The Lords of Appeal in Ordinary are also part of the legislature by virtue of their membership of the House of Lords (as the Upper House of Parliament).
- The Lord Chancellor (who was eligible to sit on the Appellate Committee of the House of Lords and was the senior ranking judge) was also a Cabinet Minister and therefore a member of the executive, the legislature and the judiciary.

The government's answer was a radical reaffirmation of the doctrine of the separation of powers. The Appellate Committee of the House of Lords would be abolished and replaced with a Supreme Court, and the office of the Lord Chancellor would be reformed to comply with the doctrine of separation of powers. These reforms were accomplished via the passing of the Constitutional Reform Act 2005.